



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, FF

Introduction

On June 5, 2012, as a result of the tenant's application for review consideration a decision and Order issued on May 4, 2012, was suspended and today's review hearing was ordered.

The landlord's April 13, 2012, Application for Dispute Resolution, in which the landlord requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution had resulted in a monetary order in the sum of \$795.00 for April, 2012, rent, the \$50.00 filing fee; less the deposit.

Both parties were present at this review hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Preliminary Matters

The landlord confirmed receipt of the Notice of Review hearing, which was posted to his door sometime after June 7, 2012. The tenant had given the landlord a copy of the Notice of hearing, a copy of the review decision; the tenant's address was not provided.

The tenant stated that he also left the landlord several notes, as evidence. The tenant testified that the landlord has "always had" his address.

The landlord made evidence submissions for the original hearing held on May 4, 2012. The tenant stated he had not received any evidence from the landlord.

The parties agreed that they each had a copy of the signed tenancy agreement; I determined I would reference that document.

The balance of the evidence was set aside and the parties were at liberty to make oral submissions. The landlord agreed to set aside the evidence the tenant claimed not to have received.

The tenant did not supply any proof of service of the 2 notes that he stated were given to the landlord with the Notice of Reconvened hearing; I determined that those notes would not be considered; the tenant was at liberty to provide oral testimony.

The landlord withdrew the request for an order of possession; the tenant vacated the unit as a result of a previous Order issued to the landlord.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid April, 2012, rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced on February 1, 2011, rent was \$795.00 per month, due on the first day of each month. A deposit in the sum of \$397.50 was paid. The parties signed a tenancy agreement; the terms of which were confirmed during this hearing.

The parties agreed that on February 28, 2012 a hearing was held in response to the tenant's application. The tenant was provided with rent abatement in the sum of \$120.00 per month, commencing in January, 2012, for the loss of laundry services. There was no dispute that the laundry was not reinstated; the landlord agreed that the rent abatement continued until the tenancy ended, with the tenant paying \$675.00 per month.

The tenant vacated the rental unit in late April, 2012, the date is in dispute. The tenant vacated as the result of an Order of possession issued on March 16, 2012. The tenant had applied for review consideration of that decision (file 246686), a decision issued on April 26, 2012, dismissed the application and confirmed the Order of possession.

The landlord had issued a 2 Month Notice to End Tenancy for Landlord's Use and the tenant did not pay March, 2012, rent as he understood he was entitled to compensation in the sum equivalent to 1 month's rent. The tenant argued that April 2012 rent owed should be adjusted to reflect the additional \$120.00 owed to the tenant as compensation required as a result of the 2 Month Notice to End Tenancy.

The tenant did not pay April, 2012, rent. The tenant submitted the landlord had hired him to perform work on the rental unit, in lieu of rent owed for that month. The landlord stated he did not ask the tenant to complete any work to the unit and that the tenant was to pay rent, as he was to have vacated the unit at the end of March, 2012. Since

the tenant had applied for review consideration, he remained in the unit until after his review consideration application decision was issued on April 23, 2012.

Analysis

The tenant has been compensated as provided by the Act, when a 2 Month Notice to End Tenancy is issued. The tenant owed \$795.00 rent for March, 2012; less \$120.00 that was Ordered as compensation for the loss of laundry. The value of the tenancy has previously been found to be \$675.00 per month; therefore, the tenant has not suffered a loss and was entitled to the equivalent of one month's rent owed; \$675.00. Therefore, I find that the amount of rent owed for April, 2012, is not affected; the rent in April was valued at \$795.00 less \$120.00 for loss of laundry.

I have rejected the tenant's claim that the landlord relieved him of the need to pay April, 2012, rent, by allowing the tenant to complete work on the rental unit. The tenancy agreement contained no clause allowing rent reduction for work performed. In the absence of any evidence that the tenancy agreement included a term allowing rent reductions for work performed, I find that rent was owed as set out in the tenancy agreement. When a dispute occurs in relation to the terms of a written tenancy agreement, I find that the written terms are most reliable. Any verbal agreement for work performed does not fall within the jurisdiction of the Act.

The tenant chose to remain in the rental unit during the time he awaited the outcome of his application for review consideration of the decision issued on March 16, 2012, that had resulted in an Order of possession to the landlord. As the tenant occupied the rental unit and the Order of possession was confirmed, I find that the landlord was entitled to payment of April, 2012, rent in the sum of \$675.00; the tenant continued to receive compensation for the loss of laundry service in the sum of \$120.00.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The tenant provided no evidence of having given the landlord his forwarding address at the end of the tenancy; his comment that the landlord "has always had" the address, confirms this finding.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from the deposit due to the tenant. Therefore, I find that the landlord may retain the tenant's security deposit in the amount of \$397.50, in partial satisfaction of the monetary claim.

Therefore, I have issued the landlord a monetary Order, which is varied from the sum contained in the May 4, 2012, decision.

The May 4, 2012, decision is also varied, as set out in my analysis.

Conclusion

The decision and Order issued on May 4, 2012, has been varied.

I find that the landlord has established a monetary claim, in the amount of \$725.00, which is comprised of unpaid April 2012, rent in the sum of \$675.00 plus \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security deposit plus interest, in the amount of \$397.50, in partial satisfaction of the monetary claim.

Based on these determinations I grant the landlord a monetary Order for the balance of \$327.50. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 3, 2012.

Residential Tenancy Branch